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Letter Ruling 13-6: Taxability of the Lease/Sale of Computers by Public Schools

June 19, 2013

You have requested a letter ruling with respect to the Massachusetts sales tax as it applies to the sale or lease of computers to the students of ***** ("School"). The following is your representation of the facts upon which this ruling is based.

I. Facts

The School has established an optional laptop computer lease/purchase program for its students. The School District leases for purchase laptop computers through a computer company's financing program. The School District pays the lease/purchase agreement with the computer company with funds received from the lease of the laptops to students. The lease purchase agreement between the computer company and the school district is exempt from the Massachusetts sales tax as a sale to a political subdivision of the Commonwealth (G.L. c. 64H, § 6(d)).

The School's students (or their parents) who participate in the program are required to enter into a formal lease agreement with the school for a term of up to four years. During the length of the agreement the students are required to make lease payments to the School District that include the cost of the laptop and an additional amount for insurance, software updates, and administration fees. If a student leases the computer for the full four year term, the student may purchase the laptop for one dollar at the termination of the lease. If a student graduates or leaves the School district or otherwise terminates the agreement prior to the completion of the four year term, the student may purchase the laptop for a specific dollar amount that equals the

remainder due on the lease for the equipment costs, excluding insurance, software updates or other fees.^[1] Alternatively, if student opts not to purchase, the equipment must be returned to School.

II. RULING REQUESTED

Are the lease payments made by the students to the School for a laptop computer and related equipment subject to Massachusetts sales tax?

III. RULING

The lease between the School and a student of computer equipment is subject to Massachusetts sales tax under the particular facts presented here.

IV. LAW AND ANALYSIS

Under Massachusetts General Laws, a sales tax is imposed on all retail sales in Massachusetts, by any vendor, of tangible personal property or of services performed in the Commonwealth, at the rate of 6.25% of the gross receipts of the vendor from all such sales of tangible personal property or services, unless otherwise exempt. G.L. c. 64H, § 2. The definition of a sale includes any transfer of title or possession, or both, for a consideration, including leases or rentals of tangible personal property. If no sales tax is paid on the purchase of tangible personal property, a 6.25% use tax is imposed on the storage, use or other consumption of the property in Massachusetts. G.L. c. 64I, § 2. Otherwise, purchases upon which sales tax has been collected are exempt from use tax by G.L. c. 64I, § 7(a).

The exemptions to the sales tax are found in G.L. c. 64H, § 6. Section 6(d) exempts sales of tangible personal property to the United States, the Commonwealth or any political subdivision thereof, or their respective agencies.

Unlike specific exemptions for sales to the Commonwealth, its agencies or political subdivisions, and 501(c)(3) organizations, there is no corresponding blanket exemption for sales or leases *by* such entities. In fact, the definition of "retailer" in chapter 64H specifically includes the Commonwealth, its agencies or any political subdivision thereof, or their respective agencies when such entities are engaged in making retail sales of a kind ordinarily made by private persons. See G.L. c. 64H, § 1. A "vendor" is a retailer or other person selling tangible personal property that is subject to the sales tax. *Id.*

The sale or lease of the laptop computers you describe are sales of items that are ordinarily made by private persons. Therefore, the School is acting as a retailer or vendor within the meaning of G.L. c. 64H, § 1, and if it has not done so already, must register and file returns with the Commissioner as such. See Letter Ruling 92-3.

The general rule is that any person or organization, whether a government entity, profit or nonprofit organization, making sales of tangible personal property in the regular course of its business must register as a vendor and collect sales tax. An exception to this general rule is found in G.L. c. 64H, § 6(c) which exempts casual and isolated sales by a vendor, person, group, or organization not regularly engaged in the business of selling tangible personal property. This is generally a question of fact to be determined by the particular facts and circumstances surrounding the transaction and this exception does not apply to the facts you have presented, in part because of the number and regularity of such sales. See 830 CMR 64H.6.1(5).

Each period for which a lease or rental payment is charged is considered a completed retail sale for the purpose of imposition, collection, and payment of sales tax. Sales of computer hardware, computer equipment, and prewritten computer software, regardless of the method of delivery, and reports of standard information in tangible form are generally subject to the Massachusetts sales tax. Generally, transfers of prewritten software subject to tax include sales in any of the following ways regardless of the method of delivery, including electronic delivery or load and leave: licenses and leases, transfers of rights to use software installed on a remote server, upgrades, and license upgrades. See 830 CMR 64H.1.3.

The sales price on which the tax is computed for each period is the total lease or rental charges for that period, including any buyout amount due as the result of early termination of a lease.

Very truly yours,

/s/Amy Pitter

Amy Pitter
Commissioner of Revenue

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[1] This transaction is not characterized as an installment sale as the lease may be terminated with or without an optional apportioned buy-out under certain circumstances described above. See *generally*, LR 85-27.

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